

Date of Decision: 14-8-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K. V. DAVDA

VS

L. G. KULKARNI

Appearance:

Ms. Mamta Vyas for the petitioner

None present for the respondent.

Coram: MR. JUSTICE S.K. KESHOTE
(14-8-97)

ORAL JUDGMENT:

The matter was called out for hearing in the first round, second round and lastly in the third round. None put appearance on behalf of the respondent.

Heard the learned counsel for the petitioner and

perused the special civil application.

The petitioner, an officer of the State Bank of India has challenged by this special civil application the order dated 9th August, 1985 passed by the respondent whereby he has been dismissed from the bank's service as per Rule 49(h) of the State Bank of India (Supervisory Staff) Service Rules, and it has further been ordered that the period spent by the petitioner under suspension from 9-12-83 be treated as such. The counsel for the petitioner raised manifold contentions challenging the legality and correctness of the propriety of the order impugned. But I do not consider it necessary to advert to any of the contentions for the reason that the order impugned in this special civil application is appealable under Rule 51(1) and (2) of the aforesaid Service Rules. Under letter dated 9th August, 1985 of the respondent, the order of dismissal has been communicated to the petitioner and it has been specifically mentioned that if he so desired, he may prefer appeal against the said order to the appellate authority within time stipulated therein. Still, the petitioner has not availed of that remedy. When a statutory alternative remedy was available against the impugned order, then the petition is not maintainable

2. In para 22 of the petition the petitioner has deliberately made a wrong statement that he has no alternative remedy. So far as the other aspect, whether the remedy is adequate or efficacious or not, is concerned, nothing has been said. In absence of the reasons given in support of the averments that the remedy is not adequate and efficacious, the petitioner has no justification to circumvent the remedy available under law.

3. In the result this special civil application fails and the same is dismissed only on the ground of availability of alternative remedy. The petitioner shall be at liberty to file appeal against the impugned order to the appellate authority, in accordance with the service rules, within a period of one month from the date of receipt of certified copy of this order; and the appellate authority shall decide the same on merits and shall not dismiss the same on the ground of period of limitation. Subject to the aforesaid directions, rule discharged. No order as to costs.

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